

REMARKS

I. Status of the Claims

Claims 1, 17, 18 and 22 are currently amended.

Claims 2-3 and 5-16 are cancelled without prejudice.

New claims 23-29 are added

Claims 1, 4 and 17-29 are pending.

II. Objection to Claims 16-18

In the Office Action, claims 16-18 are objected to as depending from rejected claims. In reply, claim 1 is currently amended to incorporate all the limitations of claim 16. Accordingly, claim 16 is now canceled. Claims 17 and 18 are now rewritten in independent form to include all applicable limitations of claim 1. Claims 1, 17 and 18 are believed to be in condition for allowance.

III. Other Claim Amendments

In conjunction with the above-described rewriting of claims 17 and 18 in independent form, new claims 23-29 are added to depend from claim 17 or 18 and to repeat the applicable limitations of claims 4, and 19-21 which depend from currently amended claim 1. More specifically, claim 23 depends from claim 17 and is like claim 4. Claims 24 and 27 depend from claims 17 and 18, respectively, and are like claim 19. Claims 25 and 28 depend from claims 17 and 18, respectively, and are like claim 20. Claims 26 and 29 depend from claims 17 and 18, respectively, and are like claim 21. As the subject matter of new claims 23-29 has already been examined prior to this amendment, those claims are believed to be allowable for the same reasons as claims 16-18 (as previously presented). Claim 22 is currently amended to require the same bacterium as claim 17 or 18. With these amendments, claims 1, 4 and 17-29 are all believed to be in condition for allowance.

IV. Claim Rejections Under 35 U.S.C. § 103(a)

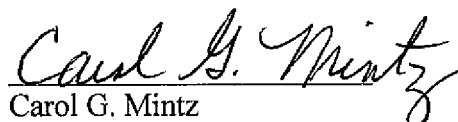
In the Office Action, claims 1, 3-4 and 19-22 are rejected under 35 U.S.C. §103(a) as obvious over *WO '950* in view of U.S. Patent No. 4,981,618 ("*Bruneteau*"), U.S. Patent No. 6,599,503 ("*da Luz*") and U.S. Patent No. 5,525,132 ("*Shanmuganathanda*"). The Office Action takes the position that it would have been obvious to one of ordinary skill in the art at the time the

claimed invention was made to replace the sphingolipids of Bruneteau et al with the yeast and bacterium mixture in a concentration and ratio, thereof disclosed by WO; and further selecting from *Bacillus megaterium* and *Shanmuganathan*, as disclosed by da Luz and *Shanmuganathan*, for use in the mixture and spraying to biologically control a cryptogamic vine disease for crops such as tomato, grape vine and other fruits of the vine. Without conceding as to the propriety of the rejection, and in an effort to advance this application to allowance, Applicant has amended claims 1 and 22 as discussed above, to require certain isolated bacterial or yeast strains which are identified by their CNCM deposit numbers. As claims 16-18, as previously presented, are free of the cited art, the currently pending claims 1, 4, 19-22 and new claims 23-29 are also believed to be non-obvious over the cited references.

V. Conclusion

Applicant respectfully requests entry of the claim amendments, withdrawal of the rejection and allowance of all pending claims. The new claims and claim amendments were not presented earlier because the need for such amendments and new claims only became apparent in view of the objections to previously presented claims 16-18, and to place the application in condition for allowance. If any necessary fee has been inadvertently omitted or if any additional fees are required or have been overpaid, please appropriately charge or credit those fees to Conley Rose, P.C., Houston, Texas, Deposit Account No. 03-2769, and consider this a petition for any necessary extension of time.

Respectfully submitted,



Carol G. Mintz
Reg. No. 38,561
CONLEY ROSE, P.C.
P.O. Box 3267
Houston, Texas 77253-3267
Tel: (713) 238-8000
Fax: (713) 238-8008
AGENT FOR APPLICANT